

Proposed 2.3 GHz Band Plan

Licensed Spectrum (in MHz)	5	4	3	2	1		5	4	3	2	1	
License Designation	A	B	C	D	E	(DARS)	F	G	H	I	J	
Frequency (in MHz)	2305	2310	2314	2317	2319	2320	2345	2350	2354	2357	2359	2360
	Lower Band						Upper Band					

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

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**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY**

In the Matter of)	
)	
Amendment of the Commission's Rules to)	
Establish Part 27, the Wireless)	GN Docket No. 96-228
Communications Service ("WCS"))	

REPLY COMMENTS OF OMNIPOINT CORPORATION

Omnipoint Corporation, by its attorneys, files this reply in response to comments filed regarding the Commission's Notice of Proposed Rulemaking¹ in the above-captioned proceeding.

Omnipoint's reply comments address private industry's concern over the lack of specific guidelines set forth by the Commission for both the allocation and use of the 2.3 GHz spectrum. The overwhelming response of industry calls for specificity in the 2.3 GHz band plan rules and strongly suggests that the Commission's overly broad proposals will contravene the public interest.

I. The Commission Should Promote the 2.3 GHz Band for the Provisioning of Specific New Services

Several commenting parties² believe that the unprecedented high degree of flexibility being proposed by the Commission to allocate the 2.3 GHz band adversely affects competition in

¹ Amendment of the Commission's Rules to Establish Part 27, the Wireless Communications Service ("WCS"), Notice of Proposed Rule Making, GN Dkt. No. 96-228 (rel. Nov. 12, 1996).

² See e.g., Comments of PrimeCo Personal Communications, L.P. at 4; Comments of SBC Communications Inc. at 2, Comments of Lucent Technologies, Inc. at 2-3.

wireless services. The problems inherent in an overly-flexible allocation plan are numerous. For instance, as noted by AirTouch Communications, several problems can arise when incompatible uses exist over the same spectrum, such as inefficient spectrum utilization plans and a lack of coordination between adjacent markets.³ Additionally, the lack of guidance provided to equipment manufacturers will likely result in the impaired development and deployment of new technology.⁴ When new technology finally is created, equipment costs are likely to be higher. As noted by the Telecommunications Industry Association, the failure of the marketplace to respond to a similar allocation in the General Wireless Communications Service⁵ in the 4 GHz band is likely to be repeated here.⁶

For the foregoing reasons, Omnipoint advocates utilizing the 2.3 GHz band for the provisioning of new services, namely wireless local loop ("WLL") and wireless internet access ("WIA"). Many other commenting parties agreed on this point, stating that adequate spectrum has already been allocated for the commercial mobile radio services ("CMRS") marketplace.⁷ As stated by BellSouth, the public interest is best served by having this spectrum made available for new services that otherwise lack access to sufficient spectrum.⁸ Furnishing the 2.3 GHz band with appropriate rules for the provisioning of WLL and WIA services will ensure members of those industries that their need for spectrum will be met. Such rules also will provide

³ Comments of AirTouch Communications, Inc. at 3-4.

⁴ Comments of Lucent Technologies, Inc. at 3.

⁵ See Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use, Second Report and Order, 11 FCC Rcd. 624 (1995) ("Second Report and Order").

⁶ Comments of the Telecommunications Industry Association at 14.

⁷ See, e.g., Comments of Bell Communications Research, Inc. at 1; Comments of Vanderbilt University at 1-2; Comments of SBC Communications Inc. at 4; Comments of the Personal Communications Industry Association at 7; Comments of the Interactive Services Association at 1-2.

⁸ Comments of BellSouth Corporation at 3.

manufacturers of WLL and WIA hardware and software with guidelines under which to develop and market new technology that will ultimately benefit consumers.

Omnipoint believes that the public interest requirements of Section 309(j) of the Communications Act, as amended ("the Act"), require the Commission to advance the development of new technologies for servicing the public.⁹ In addition, Section 254(h)(2) of the Act requires the Commission to establish rules promoting access to advanced telecommunications and information services for schools.¹⁰ The Joint Board Recommendation on Universal Service reform notes that, in meeting the statutory mandate to promote more affordable services for classrooms and schools, "wireless connections would be the more efficient alternative for connecting schools to telephone carrier offices for more than 25 percent of public schools."¹¹ While this issue is a significant national priority, the Commission has yet to allocate a single spectrum band for the exclusive purpose of promoting wireless access. The Commission can meet both of the auction and universal service statutory requirements by opening up the 2.3 GHz band to the provisioning of WLL and WIA. As noted by the Interactive Services Association, universal service funding mechanisms could help increase the demand for these services.¹²

In addition to WLL and WIA, Omnipoint agrees with those commentators advocating that a portion of this spectrum be utilized for public safety applications. As noted by the Industrial Telecommunications Association, the Commission's Public Safety Wireless Advisory Committee

⁹ See e.g., Comments of Lucent Technologies at 2; Comments of Pocket Communications at 2.

¹⁰ 47 U.S.C. § 254(h)(2).

¹¹ "In the Matter of Federal-State Board on Universal Service," Recommended Decision, CC Dkt. No. 96-45, FCC 96J-3 T ¶ 482 (rel. Nov. 3, 1996) (citing McKinsey and Company, *Connecting K-12 Schools to the Information Superhighway* at 58 (1995)).

¹² Comments of the Interactive Services Association at 2.

("PSWAC") estimates that an additional 95 MHz of spectrum is needed over the next twenty years for public safety entities.¹³ Because the Commission is unable to auction spectrum that is not for a subscriber-based service under Section 309(j)(2)(A) of the Act,¹⁴ Omnipoint agrees with those advocating a 10 MHz set aside in each license area for public safety uses.¹⁵ This set aside allows the Commission both to provide spectrum for vital public safety services and to conduct an auction as mandated by Congress.

II. The 2.3 GHz Band Plan Should Provide Alternative License Sizes

In its comments, Omnipoint urged the Commission to implement a band plan so that the auctioned spectrum could be put to its most efficient use, as required by Section 309(j) of the Act.¹⁶ Omnipoint believes that in order to meet this goal the Commission must allocate spectrum blocks that allow for many permutations while allowing aggregation through the auction process, which has proven highly efficient. Similarly, BTA license areas provide the maximum number of choices through the auction aggregation process and facilitate small business entry at 2.3 GHz. Any larger geographic unit will, by definition, eliminate effective participation by smaller operators. Additionally, in order to achieve regulatory parity, the Commission must impose on 2.3 GHz licensees the same buildout and spectrum cap rules that apply to the rest of the CMRS industry. Of all the comments received by the Commission, the overwhelming majority were consistent with this plan.

¹³ Comments of the Industrial Telecommunications Association, Inc. at 7.

¹⁴ 47 U.S.C. §309(j)(2)(A).

¹⁵ See e.g., Comments of Sprint Spectrum L.P. at 10; Comments of AT&T Wireless at 9.

¹⁶ 47 U.S.C. § 309(j)(3)(D).

A. Spectrum Segments

Omnipoint suggests segmenting both the upper and lower 15 MHz bands into five licenses of one MHz, two MHz, three MHz, four MHz, and five MHz each, as discussed in its comments. This plan allows for maximum efficiency by allowing each potential licensee to bid for spectrum segments, *paired or unpaired*, that are best suited to its individual business plans. Additionally, smaller businesses will be able to participate in the auction without the undue financial burden of having to purchase unneeded spectrum.

Several commentors are in agreement with Omnipoint.¹⁷ As pointed out by PCS PrimeCo, a single 5 MHz block of spectrum was determined to be sufficient for both GWCS and 900 MHz SMR, and is more than the total amount of spectrum available for narrowband PCS.¹⁸ In addition, with some digital technologies, a 5 MHz allocation could provide more capacity than current analog cellular systems.¹⁹ Furthermore, by segmenting the 2.3 GHz band into a maximum of 5 MHz blocks of spectrum, the discussion on whether or not to raise the existing 45 MHz spectrum cap becomes superfluous.

The Rural Telecommunications Group ("RTG"), one of only a few commentors advocating spectrum blocks more than 10 MHz in size, believes that 5 MHz blocks are too small because they would prolong the auction procedure, they could be achieved through negotiated spectrum disaggregation, and they could disrupt business plans.²⁰ We believe that smaller blocks would not prolong an auction. While spectrum disaggregation could allow small

¹⁷ See e.g., Comments of ALLTEL Mobile Communications at 4; Comments of AirTouch Communications at 9; Comments of PrimeCo Personal Communications at 11-12; Comments of Multipoint Networks at 2; Comments of Digital Satellite Broadcasting Corporation at 6; Comments of Sprint Spectrum at 5.

¹⁸ Comments of PrimeCo Personal Communications at 12.

¹⁹ *Id.*

²⁰ Comments of The Rural Telecommunications Group at 8.

businesses to acquire smaller blocks of spectrum, it must be noted that disaggregation is not mandatory and therefore offers no direct method for small business participation. As to RTG's claim that 5 MHz blocks would be too small because it would allow a few bidders to "ransom" spectrum to the detriment of companies trying to acquire large blocks of spectrum,²¹ the same could be said with any size blocks. However, the Commission must keep in mind that only by licensing the 2.3 GHz band in a maximum of 5 MHz segments will bidders of all sizes and service offerings be able to participate.

B. License Areas

An overwhelming majority of those submitting comments suggested that the Commission establish either BTAs or MTAs as license areas for the 2.3 GHz band. We prefer the one MHz, two MHz, three MHz, four MHz, and five MHz licensing plan. Omnipoint suggests licensing the 2.3 GHz band in BTA license areas for a number of reasons, namely to promote the efficient use of spectrum and to ensure small businesses are not precluded from the provisioning of services in this band.

As Pocket Communications notes, BTA license areas allow operators to focus their service offerings on specific communities.²² It is at this community level where public safety services and wireless internet services to schools are most likely to take place.

Nationwide licensing, on the other hand, has no support from private industry. As noted by Pacific Telesis Group, a nationwide licensee has little incentive to lease spectrum to a perceived competitor.²³ Additionally, the process of one or more entities leasing spectrum from a nationwide licensee would increase the cost of services and cause a delay in the time to market.

²¹ Id.

²² Comments of Pocket Communications, Inc. at 3.

²³ Comments of Pacific Telesis Group at 3.

Yet another problem with nationwide licensing is that many rural areas will be left unserved while a nationwide licensee builds out only in the more profitable urban areas.

Only one commentor, the Markle Foundation, believes that nationwide licensing is in the best interest of American consumers. It believes that in the interest of speed the Commission should award only one nationwide license, and then rely on disaggregation. Since no licensee, nationwide or otherwise, is required to disaggregate spectrum, Omnipoint does not see the Markle Foundation's plan as a viable one. Further, because not even a single potential bidder suggested any interest in providing such a national service, Omnipoint questions whether a national allocation, or even an auction for such an allocation, would not be a tremendous waste of public spectrum and Commission resources.²⁴

C. 2.3 GHz Band Spectrum Cap

Omnipoint suggests including the 2.3 GHz spectrum within the CMRS spectrum cap, to the extent the spectrum is being used to provide CMRS. Section 309(j)(3)(B) of the Act requires the Commission to avoid an excessive concentration of licenses and to disseminate licenses to a wide range of applicants, including small businesses.²⁵ Raising the current 45 MHz spectrum cap, as suggested by the Cellular Telecommunications Industry Association,²⁶ could hinder this Congressional mandate. Omnipoint agrees with Pocket Communications' statement that it is in the public interest to compel licensees controlling large blocks of spectrum to develop the technological capacity to offer additional services within that spectrum rather than being permitted to acquire more spectrum to provide such services.²⁷ To avoid a further concentration

²⁴ We presume that the Markle Foundation has no viable interest in actually providing a nationwide service.

²⁵ 47 U.S.C. § 309(j)(3)(B).

²⁶ Comments of the Cellular Telecommunications Industry Association at 16.

²⁷ Comments of Pocket Communications at 4.

of licenses, Omnipoint believes that the Commission should follow BellSouth's suggestion that any amount of leased spectrum should be included in the cap.²⁸ Additionally, Omnipoint recommends that no single licensee be allowed to obtain more than 10 MHz of the 2.3 GHz spectrum.

III. Closing the 2.3 GHz Auction Within the Statutory Deadlines Should Not Require Compromises on 2.3 GHz Allocation and Band Plan Decisions

Omnipoint understands that the Commission is under a tight deadline for conducting the 2.3 GHz auction. However, Omnipoint does not believe that the tentative conclusions reached in the NPRM, namely licensing 2.3 GHz spectrum in large geographic areas or in 30 MHz blocks, are necessary. Omnipoint agrees with RTG that although the Commission is working under a tight deadline, the Commission's decision that it would not consider auctioning more than 306 licenses is arbitrary and capricious without first evaluating alternative auction procedures.²⁹

Omnipoint believes there is a way to license the 2.3 GHz spectrum in BTAs but still meet the imposed September, 1997 deadline. In particular, there are very fair auction acceleration methods that can be implemented. Omnipoint will shortly submit a paper specifically showing how to implement one such method that gives the Commission the tools for controlling the duration of the auction.

²⁸ Comments of BellSouth at 11.

²⁹ Comments of The Rural Telecommunications Group at 7.

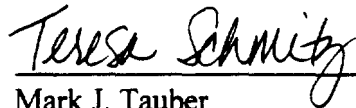
IV. Conclusion

The 2.3 GHz band has the potential to serve two equally important purposes. First, it can be used to promote WLL and WIA. Second, it can be used for vital public safety applications. By dedicating the 2.3 GHz band to the provision of these services, with a band plan that is both specific and allows small entities to participate, the Commission can promote the introduction of flexible, affordable, new services.

Respectfully submitted,

OMNIPOINT CORPORATION

By:



Mark J. Tauber

Mark J. O'Connor

Teresa M. Schmitz

Piper & Marbury L.L.P.

1200 19th Street, N.W.

Seventh Floor

Washington, D.C. 20036

(202) 861-3900

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Its Attorneys